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Supreme Court, U.S.
FILED

961877 MAY 13 1997.

OFFICE OF THE CLERK

No. _____

In the
SUPREME COURT OF THE UNITED STATES

October Term, 1996

THOMAS M. FIELDS,
Petitioner

v.

ESTATE OF IRVING L. FIELDS, et. al.
Respondent(s)

On Petition for Writs of Certiorari to Florida's Fourth District Court of Appeals and Fifteenth Judicial Circuit Court

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PETITION FOR WRIT OF CERTIORARI

Thomas M. Fields
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pro se

25pp

QUESTIONS

Question No. 1
Is it extrinsic fraud to use the witness sequestration rule to remove from the courtroom, and so leave unrepresented, the party who initiated the proceedings, has a pecuniary interest in those same proceedings, was addressed by the court's pretrial order setting the cause for non-jury trial, complied with this order by mailing to the other parties a preliminary draft of pretrial stipulations, filed with the court a complaint stating that the other parties were excluding him from such pretrial preparations and so not complying with its order, filed pretrial stipulations with the court, attended calendar call, was included on the court's calendar, and appeared at court ready for trial?

Question No. 2
Will the Supreme Court of the United States intervene when a state's courts do not grant relief from such extrinsic fraud?

PARTIES TO THE PROCEEDINGS

Petitioner
- Thomas M. Fields

Respondents
- Shirley J. Fields
- The Estate of Irving L. Fields

Interested Parties
- Paige Lewis (a.k.a. Patricia L. Fields)
- Ryna Mehr

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GENERAL REFERENCES

West's Words and Phrases, Vol 15A under the headings Extrinsic Fraud, Extrinsic Mistake, and Extrinsic or Collateral Fraud — 8

CASES

Brown v. Brown, 432 So.2d 704 — 8

DeClaire v. Yohanon, 453 So.2d 375 — 8

Gordon v. Gordon, 625 So.2d 59 — 9

Hazel-Atlas Glass Co. v. Hartford-Empire Co., 64 S.Ct. 997 — 2,7

United States v. Throckmorton, 98 U.S. 61 — 8

STATUTES and RULES

Fed. RCP Rule 60 — 3

Fla. RCP Rule 1.540 — 3

OPINIONS BELOW

No opinions have been written.

The order of the court of appeals (App., infra, 6a) is reported at 686 So.2d 598 (Table).

JURISDICTION

On December 11, 1996, the Florida Fourth District Court of Appeals affirmed the trial court.

On January 14, 1997, the Florida Fourth District Court of Appeals denied the Appellant's petition for clarification and motion for rehearing.

On March 19, 1997, Justice Kennedy extended the time for filing this petition for writ of certiorari to and including May 14, 1997.

Jurisdiction of this court arises from a rule of equity practiced by this and other courts to the effect that

> "under certain circumstances .. relief will be granted against judgements regardless of the term of their entry .. This equity rule, which was firmly established in English practice long before the formation of our Republic, the courts have developed and fashioned .. It is a judicially devised remedy .. created to avert the evils of archaic rigidity, this equitable procedure has always been characterized by flexibility .. to accord all the relief necessary to correct the particular injustices involved in these situations" (Hazel-Atlas Glass Co. v. Hartford-Empire, Co., 64 S.Ct. 997)

CONSTITUTIONAL, STATUATORY AND REGULATORY PROVISIONS

Fed. RCP Rule 60, which is similar to Fla. RCP Rule 1.540, provides that

> "the court may relieve a party .. from a final judgement, order, or proceeding for the following reasons .. (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; .. This rule does not limit the power of a court to entertain an independent action .. to set aside a judgement for fraud upon the court"

STATEMENT OF THE CASE

Petitioner Thomas M. Fields is the son of the decedent, Irving L. Fields.

This case is about a deed that was executed as a result of undue influence a few hours before the decedent died.

This Petition addresses the extrinsic fraud that prevented the Petitioner from fully participating in the proceedings below.

Such extrinsic fraud is demonstrated by the following facts:

1. The decedent's will bequeathes to the Petitioner the decedent's personal effects, including the decedent's interest in his home, which he owned as tenants in common with his second wife.

2. The Petitioner, through attorneys he retained to represent the estate, filed a challenge to the deed's validity in 1991.

3. The Petitioner was removed as executor of this estate in 1992. His attorneys then withdrew, which is the principal reason why he has represented himself pro se.

4. On April 5, 1993, after appointing a successor personal representative, the court issued an order setting this case for trial. This order instructed the parties (listed here on page ii) to jointly prepare pre-trial stipulations.

5. On May 4, 1993, the Petitioner mailed the trial court a notice complaining that the other parties addressed in its order had not communicated with him. The Petitioner also indicated that, unless they communicated with him, he would file his pretrial stipulations unilaterally.

6. Two weeks later, on May 19, 1993, the Petitioner mailed his stipulations to the court. In these, he described the evidence, listed exhibits and witnesses, and indicated that he would appear pro se at the trial.

7. Calendar call was convened on July 21, 1993. The Petitioner attended. The court provided the attendees a copy of its calendar, which identified this case as

91-987 CP	ESTATE OF FIELDS	PETER FORMAN LAWRENCE MILLER THOMAS M. FIELDS

8. The trial was scheduled for August 17, 1993. After all the parties had arrived, the judge began the trial by asking who the witnesses were. The other parties identified the Petitioner. The judge then ordered him to leave the courtroom. The Petitioner protested, but his objections were ignored.

9. Neither party that identified the Petitioner as a witness called him to testify at the trial.

10. None of the witnesses most important to the estate's case were called to testify at the trial.

11. The trial concluded on August 18th.

From the preceding, it is clear that the Petitioner complained to the trial court as early as May 4, 1993 that the other parties were endeavoring to exclude him from the proceedings.

This and other complaints about the representation of the estate, especially the interests of the decedent's minor granchildren, have been ignored by the trial court.

Therefore, the Petitioner took his complaints to the court of appeals, which affirmed the trial court and declined a petition asking for clarification on the issue of extrinsic fraud.

ARGUMENT

There are at least three reasons why this petition should be granted

1. fraud upon the court is a serious public issue
2. such fraud is obvious in this case
3. despite the importance of this issue to the public, the court of appeals has refused to clarify its decision in this instance so as to reconcile it with other decisions it and other courts have made on the same question of law

How serious is fraud upon the court? According to this Court's opinion in Hazel-Atlas Glass Co. v. Hartford-Empire Co., 64 S.Ct. 997:

> "tampering with the administration of justice in the manner indisputably shown here involves far more than injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society .. the public welfare demands that the agencies of public justice be not so impotent that they must be mute and helpless victims of deception and fraud"

That this issue is special has been similarly recognized by Florida's Third Court of Appeals in Brown v. Brown, 432 So.2d 704:

> "'Fraud upon the court' is a special kind of fraud, more serious in scope and implication than fraud sufficient for relief under Federal Rule of Civil Procedure 60(b)(3)"

Sadly, fraud upon the court is neither new nor uncommon. More than a hundred cases are tabulated in Volume 15A of West's Words and Phrases under the headings Extrinsic Fraud, Extrinsic Mistake, and Extrinsic or Collateral Fraud.

Fortunately, fraud upon the court is easy to demonstrate. All the authorities listed by West's W&P, including the Florida Supreme Court in DeClaire v. Yohanon, 453 So.2d 375, apply the same standard that this court established in 1878 in United States v. Throckmorton, 98 U.S. 93:

> "Where the unsuccessful party has been prevented from exhibiting his full case, by fraud or deception practiced on him by his opponent, AS BY KEEPING HIM AWAY FROM COURT .. these. and similar cases .. are reasons .. to set aside and annul the former judgement or decree, and open the case for a new and a fair hearing" (emphasis added)

Unfortunately, when the Petitioner presented the same facts and standards to Florida's Fourth Court of Appeals and the Florida Bar Association, they fell upon deaf ears. There must be a reason why, but the 4DCA has refused to provide one. Its decision certainly seemed out of character with its decision in Gordon v. Gordon, 625 So.2d 59, according to which

> "The means .. are not as important as is the purpose .. the deliberate interruption of the free participation in the decision-making process"

CONCLUSION

Such extrinsic fraud, even when not practiced by officers of the court, is sufficiently serious to set aside and annul the affected judgements or decrees, and open the case for a new and a fair hearing.

WHEREFORE the Petitioner humbly asks this Court to review these proceedings, including the ancilliary proceedings of the Florida Bar (File No. 96-51,040 thru 045), to the end that the judgements and decisions rendered in these proceedings may be reversed, and the Petitioner be granted such other and further relief as allowed by law for such fraud and other wrongful acts.

Respectfully submitted,

Thomas M. Fields
6860 Georgetown Drive
Mentor, Ohio 44060
pro se

APPENDIX A

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT, IN AND FOR
PALM BEACH COUNTY, FLORIDA

IN RE: THE ESTATE OF IRVING L. FIELDS Deceased _____/	PROBATE DIVISION FILE 91-987 CPS
PAIGE LEWIS, as Successor, Personal Representative, Irving L. Fields, vs. SHIRLEY J. FIELDS, Defendant _____/	ADVERSARY PROCEEDING NO. 1-4

FINAL JUDGEMENT FOR DEFENDANT

This action was heard by the Court on August 17 and 18, 1993. Upon the evidence presented, the decision of the Court stated on the record on August 18, 1993, and after due consideration,

IT IS ADJUDGED that:

1. The legal proceedings (initially brought by Thomas M. Fields as Personal Representative of the Estate of Irving L. Fields and, after his removal as personal representative, as subsequently continued by Paige Lewis as Successor Personal Representative of the Estate of Irving L. Fields to set aside that certain Indenture from Irving L. Fields joined by his wife Shirley Fields to Shirley Fields dated March 17, 1991 and recorded in Official Records Book 6758, Page 523 of the Public Records of Palm Beach County, Florida) are hereby dismissed with prejudice

2. The legal proceedings (initially brought by Thomas M. Fields as Personal Representative of the Estate of Irving L. Fields and, after his removal as personal representative, as subsequently continued by Paige Lewis as Successor Personal Representative of the Estate of Irving L. Fields to partition the real property described in the Indenture in decretal paragraph 1 above) are hereby dismissed with prejudice;

3. Plaintiff Paige Lewis, as Successor Personal Representative of the Estate of Irving L. Fields, shall take nothing by this legal action and shall go hence without day; and

4. The Court retains jurisdiction to determine all issues as to costs.

ORDERED at Delray Beach, Florida this
25th day of August, 1993

Michael E. Gersten
Circuit Judge

Copies furnished to:

Peter J. Forman, Esq.
Gustafson, Stephens, Ferris, Forman
& Knight, P.A.
Attorneys for Plaintiff

Robert J. Hunt, Esq.
Hunt, Cook, Riggs, Mehr & Miller, P.A.
Attorneys for Defendant

Thomas M. Fields

APPENDIX B

IN THE DISTRICT COURT OF APPEAL OF THE
STATE OF FLORIDA, FOURTH DISTRICT
JULY TERM 1996

IN RE ESTATE OF
IRVING L. FIELDS,
Deceased

THOMAS M. FIELDS and VICKI J. FIELDS,
Appellant(s),

v.

PAIGE LEWIS, as successor personal representative of the Estate of Irving L. Fields,
Appellee

CASE NO. 96-0638

Decision filed December 11, 1996

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; John D. Wessel, Judge; L.T. Case No. 91-987 CPS IY

Thomas M. Fields and Vicki J. Fields, Mentor, Ohio, pro se.

Philip M. Burlington of Caruso, Burlington, Bohn & Compiani, P.A., West Palm Beach, for appellee.

PER CURIAM.
AFFIRMED
POLEN, PARIENTE, and GROSS, JJ., concur.

APPENDIX C

IN THE DISTRICT COURT OF APPEAL OF THE
STATE OF FLORIDA, FOURTH DISTRICT,
P.O. BOX 3315, WEST PALM BEACH, FL 33402

THOMAS M. FIELDS and
VICKI J. FIELDS
Appellant(s)

CASE NO.
96-00638

vs.

THE ESTATE OF IRVING L.
FIELDS
Appellee(s).

L.T. CASE NO.
CP 91-987 CPS
PALM BEACH

January 14, 1997

BY ORDER OF THE COURT:

ORDERED that appellants' petition filed December 23, 1996, for clarification of the court's decision and motion for rehearing is hereby denied.

I hereby certify the foregoing is a true copy of the original court order.

MARILYN BEUTTENMULLER
CLERK

cc: Thomas M. Fields
Vicki J. Fields
Arthur G. Wroble
Peter Forman
Philip M. Burlington
Ryna E. Mehr
David A. Riggs
Ronald M. Zakarin
Robin Snider

APPENDIX D

Supreme Court of Florida

Tuesday, Feb. 4, 1997

IN RE: ESTATE OF IRVING FIELDS	*	
THOMAS FIELDS, et al.,	*	CASE NO. 89,823
Petitioners	*	District Court of Appeal,
vs.	*	4th District
PAIGE LEWIS, etc.,	*	No. 96-0638
Respondent	*	

It appearing to the Court that it is without jurisdiction, the Petition for Review is hereby dismissed. Jenkins v. State, 385 So.2d 1356 (Fla. 1980).

No Motion for Rehearing will be entertained by the Court.

cc: Hon. Marilyn N. Beuttenmuller, Clerk
Hon. Dorothy H. Wilken, Clerk
Hon. John D. Wessel, Judge

Mr. Thomas M. Fields
Mr. Philip Burlington

Sid J. White
Clerk Supreme Court